

Hawaiian Islands Humpback Whale National
Marine Sanctuary Advisory Council

Wednesday, February 19, 1997
10:00 AM - 12:00 PM
Honolulu Interisland Terminal
Room #4, 7th Floor

Meeting Minutes

Attendance:

SAC Members present: Maile Bay, Hannah Bernard, Stan Butler, Herman Chong, Jr., Jim Coon, Walter Haas, June Harrigan-Lum, Keoni Fairbanks, Marc Hodges, Greg Kaufman, Thelma Kia-Shimaoka, William Lennan II, Donna Liddicote, Craig MacDonald, Jim McCallum, Lt. Michael Neininger, Paul Nachtigall, Francis Oishi, Jan Pinney, Dick Poirier, Robert Schroeder, Glenn Soma, Claud Sutcliffe, Skip Weinstein.

Excused: Beth Goodoni, Lou Herman.

Others present:

NOAA/DC: Terry Garcia.

NOAA/OCRM: Jeff Benoit.

NOAA/SRD: Kellese Araki, Carol Carey, Margo Jackson, Justin Kenney, Debra Malek, Naomi McIntosh, Brady Phillips, Jean Souza, Allen Tom.

NOAA/NMFS: Gene Nitta.

Hawaii County Planning: Daryn Arai.

Public: Mike Compton, Ed Miyahira, Steven Montgomery, Erik Wong.

Distributed Materials:

- Agenda
- Final Environmental Impact Statement/Management Plan
- FEIS Summary
- Sanctuary Newsletter

Welcoming Remarks:

Welcoming remarks were made by Terry Garcia, Acting Assistant Secretary of Commerce for Oceans and Atmosphere, and Allen Tom, Sanctuary On-Site Liaison

Mr. Allen Tom introduced visiting NOAA DC staff (Terry Garcia, Assistant Secretary of Commerce for Oceans and Atmosphere; Jeff Benoit, Director of NOAA's Office of Ocean and Coastal Resource Management; Margo Jackson, NOAA General Counsel; Justin Kenney, Public Affairs Officer for NOAA's Sanctuaries and Reserves

Division; Debra Malek, Pacific Branch Manager; and Brady Phillips, Program Specialist;). Allen also reminded SAC members to turn in their airline tickets and parking receipts for reimbursement.

Mr. Terry Garcia explained that the Final Environmental Impact Statement and Management Plan (FEIS/MP) was presented to Governor Ben Cayetano on February 18, 1997. He stressed that the FEIS/MP does not constitute top-down management but rather, emphasizes locally-based management. A key part of the Sanctuary program focuses on partnerships with active participation from the community. The Sanctuary does not regulate fishing, diving, or other ocean activities. What the Sanctuary does is help protect the humpback whale and its environment.

Mr. Tom outlined the final steps of the Governor's review process on the FEIS/MP. The process stipulates that following a 30-day period, the final Sanctuary regulations will be issued, thereby triggering the start of the governor's 45-day review period.

Mr. Tom also presented an overview of the changes that were made to the FEIS/MP. Particular sections of the document were identified in the meeting for discussion:

Page 18: Provides a chart of significant changes that were made to the FEIS.

- Boundary proposal is the same.
- Ala Wai boat harbor is excluded.

Page 283: Response to comments

Page 321: A list of people who submitted comments

Page 367: Draft Memorandum Of Understanding (MOU) with the State (Department of Health (DOH) and Department of Land and Natural Resources (DLNR)).

Mr. Tom stated that in the time period between the release of the draft and final environmental impact statements, most of the work involved responding to comments. Corresponding changes were then made to the document.

A primary issue addressed in the FEIS/MP dealt with: No additional permit requirements. There will be a Memorandum of Understanding (MOU) between the Sanctuary and DLNR and DOH that clarifies how the Sanctuary will review permits within the existing processes. On the federal side the Sanctuary will coordinate actions with National Marine Fisheries Service (NMFS) (See Part V: Sanctuary Management Plan in the FEIS/MP).

Mr. Greg Kaufman inquired about an enforcement MOU with the State which was signed in 1992 with Bill Paty. Why wasn't this document updated? (Appendix E)

Mr. Brady Phillips: Appendix E is only meant to be an example of how the Sanctuary envisions working with the State. The Sanctuary program recognizes that the State's marine patrol program has been moved, in part, to DLNR and will work with them and NMFS to revise the existing enforcement MOU as necessary.

Mr. Kaufman: One of the oppositional concerns (regarding the Sanctuary) is the presumption of increased fines.

Mr. Garcia: Enforcement is not the end in and of itself to compliance. Education is a large part of enforcement. Tickets are not written to meet quotas. Our goal is to help people understand the law and help them as much as possible to comply with the law.

Mr. Tom informed the SAC that a penalty schedule is currently being worked on with NOAA's General Counsel.

Mr. Francis Oishi: Originally an enforcement section was intended to be part of the MOU with DLNR and DOH. Wasn't it the intention for Sanctuaries to work on a separate MOU concerning enforcement?

Mr. Phillips: Yes. Appendix E was meant to be an example of past agreements between NOAA and the State. An updated enforcement MOU will be developed between NOAA and the State in the future.

Mr. Paul Nachtigall: The agreement may be amended with consent of mutual agreement. Does the governor have the authority to amend appendix E?

Mr. Phillips: No. The governor cannot amend an existing agreement.

Mr. Phillips: A new MOU will be reviewed by the governor's staff and we would expect that the governor's concerns will be addressed.

Mr. Craig MacDonald: If an MOU is amended, is this amendment a change to the FEIS/MP and does it go through public review?

Mr. Phillips: A change to the MOU is not necessarily a change to the FEIS/MP. It may only change procedures of how the Management Plan is implemented.

Mr. Claud Sutcliffe: I think the FEIS/MP and the newsletter are good and has been responsive to the public.

Public Questions:

Mr. James Housh: DOCARE has too many responsibilities. Sanctuary rules will now have to be enforced by DOCARE. Training should be provided by the Sanctuary.

Mr. Bill Mossman: How much money will the State need to commit to Sanctuary enforcement?

Mr. Phillips: The MOU is just an agreement to coordinate how two agencies will work together. It does not involve any financial commitment.

Mr. Jeff Benoit: Part of the answer regarding the availability of funds depends on what the Governor approves as far as the size of the boundary and the management proposals. These details will be worked out at the time of his decision.

Mr. Garcia: This is not an unfunded mandate for the State. The federal government is committed to funding this program through direct Congressional funding, corporate sponsorships, etc.

Mr. MacDonald: What are we talking about in real terms? How much resources can be allocated?

Mr. Garcia: The administration is committed to protecting environmental programs. An additional \$1.5 million was requested for the National Marine Sanctuary (NMS) program. This money will most likely be spent, in part, to help implement the two new sanctuaries.

Mr. Kaufman: The document (FEIS/MP) should be titled Federal, State, and Public Partnership.

A SAC member inquired if the Monterey National Marine Sanctuary did a partnership with the public.

It was commented that the Hawaii Sanctuary is already involved in creative ways to increase revenues.

A member stated that the Sanctuary should not compete with non-profit dollars in the private sector.

Ms. Debra Malek stated that some donations in the Monterey Bay sanctuary went to non-profit organizations to develop education material regarding enforcement.

Mr. Garcia: Sanctuaries attract new interest.

Ms. Hannah Bernard agreed that NMS has supported non-profit organizations in Hawaii in a very fair way.

Mr. Tom: If the Sanctuary Program is approved then the SAC will begin to function as other SACs do in other Sanctuaries.

Mr. Bill Lennan: What is the Governor's agenda on the FEIS?

Mr. Tom: (Summarized the Governor's approval process. He has until June 6, 1997.) If the Governor makes changes to the document the SAC make-up (constituency) may change. It would be discussed as an agenda item.

Mr. Kaufman: By-laws. Will new officers be elected before June when the one- year term is up?

Mr. Tom: Present SAC officers will serve until a successor is elected.

Mr. Kaufman: Motion to continue with the present SAC officers until the Governor makes a decision. (Motion unanimously carried)

A SAC member asked whether the Governor can take back a designated boundary.

The response was Yes. Everything within Federal waters.

Mr. Walter Haas: Victor Honda, Allen Tom and Gene Nitta held enforcement meetings on Kauai. It was a good effort and helped clarify many different issues. When the penalty schedule comes out it will help clarify things as well.

Mr. Jim Coon: I would like to say what a pleasure its been to work with everyone. We can be proud that concerns were brought to the table and these issues have been adequately addressed in this document.

Mr. MacDonald: The staff has been wonderful.

Mr. Kaufman: I don't believe this document is in the hands of the Governor. The Governor represents the people and it is up to us to let him know what we think. People have taken a knee jerk reaction to this issue and they should take the time to understand the Sanctuary. I would like to ask fellow SAC members to help educate the Mayor on Maui on the Sanctuary.

Mr. Phillips: We are still available to talk to groups about the sanctuary and the FEIS.

Mr. Kaufman: Is there any idea on the funding levels for the Sanctuary?

Ms. Malek: Less than \$1 million and more than half a million.

Mr. Benoit: Dollars are not the only benefit. The Sanctuary can provide expertise and can work to bring in other federal agencies to help out with education and research programs.

Meeting adjourned.

Next Meeting: Will be scheduled after Governor Cayetano makes his final decision in June.